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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

THE STANLEY WORKS,

Petitioner,

v.

BENJAMIN CHRISTOPHER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal district court that has remanded a removed diversity case to state court under 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction has jurisdiction over a motion for reconsideration filed more than 18 months after the case was remanded?

2. Where a federal district court has remanded a diversity case to state court based upon a finding that the plaintiff is judicially estopped from recovering more than $75,000 in damages because of representations his counsel made to the court as to the value of the case, is it "reasonably timely" for the plaintiff to seek relief from the $75,000 limitation more than 18 months after the remand, given that 28 U.S.C. § 1446(b) prohibits any petition for removal more than one year after the complaint is filed and the plaintiff has offered no explanation for the delay?

3. Whether the federal district courts, when considering whether the $75,000 amount-in-controversy requirement of 28 U.S.C. § 1332 is met in the context of a motion to remand a removed diversity case, lack the authority to make a finding, as part of a remand order, that the plaintiff as a result of his position is estopped from recovering more than $75,000, even when the elements of judicial estoppel otherwise are met?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 CORPORATE DISCLOSURE STATEMENT

The petitioner, The Stanley Works, is a Connecticut corporation formed in 1852. The Stanley Works has no parent company, and no publicly traded company owns more than 10% of its stock.

The named defendant in the complaint and appellee in the court of appeals was Stanley-Bostitch, Inc., a Delaware corporation. At the time of the filing of the complaint, Stanley-Bostitch, Inc., was a wholly-owned subsidiary of The Stanley Works. On July 3, 1999, Stanley-Bostitch, Inc., was merged into The Stanley Works. The Stanley Works is the successor-in-interest to Stanley-Bostitch, Inc.

The plaintiff and appellant below, Benjamin Christopher, is the respondent in this court.

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PETITION FOR WRIT OF CERTIORARI

The Stanley Works (successor-in-interest to Stanley-Bostitch, Inc.) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The judgment of the court of appeals is unreported and is reprinted in Appendix A at 1a. The opinion of the court of appeals is reported as *Christopher v. Stanley-Bostitch, Inc.*, 240 F.3d 95 (1st Cir. 2001), and is reprinted in Appendix B at 3a.

The district court's denial of the plaintiff's motion for reconsideration (filed on March 3, 2000), from which the appeal was taken, is unreported and is reprinted in Appendix C at 15a. The district court's original order (dated August 11, 1998) is unreported and is reprinted in Appendix E at 19a.

The Massachusetts Superior Court's denial of the plaintiff's "motion for clarification" of the district court's August 11, 1998 order is unreported and is reprinted in Appendix D at 17a.

JURISDICTION

The court of appeals entered its judgment on February 27, 2001 (App. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTES INVOLVED

28 U.S.C. § 1332
Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between -

(1) citizens of different States; . . .

28 U.S.C. § 1446
Procedure for removal

. . .

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

28 U.S.C. § 1447
Procedure after removal generally

. . .

(c) A motion to remand the case on the basis of any defect other than lack of any subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

FEDERAL RULES OF CIVIL PROCEDURE
RULE 60
Relief from Judgment or Order

. . .

(b) **Mistake: Inadvertence: Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise,

or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after judgment, order or proceeding was entered or taken. . .

STATEMENT OF THE CASE

This case concerns the authority of the federal district courts to enter appropriate orders when faced with plaintiffs who seek remand of removed diversity cases on amount-in-controversy grounds, as well as the authority of the federal courts to reconsider such orders long after remanding such an action to state court on the basis of a lack of federal subject matter jurisdiction. Accordingly, the relevant facts are primarily procedural.

A. *The Complaint and Its Removal*

On June 15, 1998, the plaintiff, Benjamin Christopher ("Christopher"), filed a complaint in the Essex County, Massachusetts, Superior Court alleging that he was injured while using a product designed and manufactured by Stanley-Bostitch, Inc. ("Stanley"). App. 4a. On July 20, 1998, Stanley filed a timely notice of removal to United States District Court for the District of Massachusetts pursuant to 28

U.S.C. §§ 1441(a) and 1446(a), based upon diversity jurisdiction under 28 U.S.C. § 1332(a). App. 5a. There is no dispute as to diversity of citizenship.[1] With respect to the $75,000 amount-in-controversy requirement of § 1332(a), Stanley relied upon the fact that the plaintiff had received more than $85,000 in worker's compensation benefits as a result of the accident. App. 5a.[2]

B. *The Plaintiff's Misleading Position*

Christopher filed an "opposition to . . . removal," which the district court treated as a motion to remand under 28 U.S.C. § 1447(c). App. 5a-6a.

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[1] Christopher is a citizen of Massachusetts; Stanley-Bostitch was a Delaware corporation with its principal place of business in Rhode Island. App. 5a. (Stanley-Bostitch has now been merged into The Stanley Works, a Connecticut Corporation with its principal place of business in Connecticut.)

[2] The removal statute, 28 U.S.C. § 1446, does not place any specific burden of proof upon the removing defendant as to the threshold issue, nor would it be appropriate or reasonable to compel the defendant to prove the extent of the plaintiff's damages, especially in jurisdictions like Massachusetts which have abolished the ad damnum. Mass. Gen. Laws c. 231, § 13B. As the notice of removal must be filed within 30 days from the receipt of the complaint, the defendant has no opportunity to conduct discovery into the extent of plaintiff's injuries. Therefore, the defendant's decision to remove the case is entitled to deference — otherwise, the right to remove a case would be illusory. See *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291-92 (1938). Evidence of the extent of plaintiff's injuries and damages rests solely with the plaintiff at the early stages of the litigation. Therefore, the removal statute has only two requirements for the notice of removal: (1) that it be signed by defense counsel pursuant to Rule 11; and (2) that it contain a "short and plain statement of the grounds for removal." 28 U.S.C. § 1446(a). Stanley's notice met these requirements.

Christopher did not question diversity of citizenship, but argued that Stanley had not shown that the $75,000 amount-in-controversy requirement of § 1332 was met.

In support of remand, Christopher made several assertions designed to imply that the value of the case was less than $75,000. App. 6a. Among other things, he asserted that the state superior court had made a "factual determination that the plaintiff's damages could not exceed $25,000." App. 6a. In fact, however, the superior court had merely remanded the case (to state district court) based upon Christopher's failure to specifically allege damages in excess of $25,000, and Christopher had successfully petitioned the superior court to re-transfer the case to superior court upon the basis of his assertion that his "damages have greatly exceeded $25,000." App. 6a.

The court of appeals found that Christopher's representation to the district court "was, at best, misleading and demonstrated a questionable lack of forthrightness to the federal court." App. 7a. Perhaps even more significantly, Christopher later admitted that he "always contended that the value of this case was over $75,000.00," App. 16a, a position entirely inconsistent with his opposition to its removal.

C. *The District Court's Remand Order*

Stanley filed an opposition to remand which, among other things, brought to the district court's attention a full and accurate history of the state court proceedings that the plaintiff had misstated. After reviewing the papers, the district court, on August 11, 1998, entered the following order by endorsement on Stanley's opposition:

> This case is ordered remanded to the Massachusetts Superior Court sitting in and for the County of Essex. The plaintiff due to the position he has asserted herein, is judicially stopped from recovering more than $75,000.00 in this action.

App. 7a; see also App. 20a.[3]

On August 13, 1998, the notice of transfer of the records back to the Essex Superior Court was filed, and the parties found themselves back in state court. App. 7a. Christopher never filed any notice of appeal from the district court's August 11, 1998 Order.

D. *The State Court Proceedings on Remand*

The case proceeded with discovery and other trial preparation in the state superior court.

On November 23, 1999, more than 15 months after the case was remanded, Christopher filed in the state superior court a "motion for clarification" of the

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[3] While the court of appeals eventually construed the two sentences of this order as severable and independent, Stanley submits (and will argue, *infra*) that in fact the second sentence, setting forth the court's judicial estoppel determination, is the basis for, and is explanatory of, the first sentence. That is, since Stanley's showing that the plaintiff's receipt of more than $85,000 in workers' compensation benefits from the accidence was *prima facie* evidence that the amount in controversy exceeded $75,000, the court's determination that less than $75,000 was in controversy and that the case therefore should be remanded was based upon the court's determination that the plaintiff was estopped from recovering more than $75,000 by his position before the court.

August 11, 1998 Order, essentially requesting that the superior court disregard the judicial estoppel ruling. App. 7a-8a.[4] Christopher argued that the federal court had determined that it lacked subject matter jurisdiction and that court therefore had no authority to make the determination that the plaintiff was judicially estopped from recovering more than $75,000. App. 8a; see App. 17a-18a. Stanley argued that the federal court did indeed have the authority to make the estoppel determination as part of its remand order, and that all the elements of judicial estoppel were met.

After a hearing, the Superior Court denied Christopher's motion for "clarification". App. 8a; see also App. 18a.

E. *Plaintiff Returns to Federal Court*

On March 8, 2000, a year and a half after the district court had remanded the case to the state court, Christopher filed a motion for reconsideration in the federal district court. App. 8a; see also App. 15a-16a. In support of this motion, Christopher asserted that he "has always contended that the value of this case was over $75,000.00." App. 8a; see also App. 15a-16a.

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[4] By that time, more than one year had passed from the date the original complaint was filed, thereby precluding a new removal petition to the United States District Court even if the plaintiff were to succeed in his effort to be allowed to claim what he had secretly contended all along, i.e., that the amount in controversy was well over $75,000, which meant that all the requirements for diversity jurisdiction in fact were met. See 28 U.S.C. § 1446(b).

The District Court denied the motion for reconsideration without elaboration. App. 9a, 18a. Christopher appealed from the denial of reconsideration. App. 9a.

F. *The Court of Appeals Decision*

1. After reciting the facts of the case, App. 4a-9a, the court of appeals considered whether 28 U.S.C. § 1447(d), which provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise [excepting certain civil rights cases]," precluded appellate review of the judicial estoppel determination. App. 9a. The court of appeals concluded that the judicial estoppel determination in the district court's August 11, 1998 Order was severable from the order of remand itself "in logic and in fact," under *City of Waco v. United States Fidelity & Guarantee Co.*, 293 U.S. 140 (1934), and that § 1447(d)'s express exclusion of remand orders from appellate jurisdiction accordingly did not preclude appellate review of the accompanying judicial estoppel determination. App. 10a. The court of appeals then concluded that it had jurisdiction "under the logic of City of Waco." App. 10a-11a.[5]

2. It is important to recognize that the court of appeals, in its discussion of jurisdiction, never addressed the jurisdictional implications of the

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[5] Alternatively, the court found that this case would be an appropriate instance for "mandamus jurisdiction and relief." App. 13a. In fact, 28 U.S.C. § 1651 is not an independent basis for appellate jurisdiction; that statute merely authorizes mandamus relief in matters in which some other statute confers jurisdiction. See *Parr v. U.S.*, 357 U.S. 513, 520 (1956). Moreover, the court of appeals did not grant relief in the nature of mandamus — it did not order the district court to perform a ministerial duty.

acknowledged and salient procedural fact that the plaintiff had not brought a timely appeal from the judicial estoppel determination set forth in the district court's August 11, 1998 Order. The appeal was only from the district court's denial of plaintiff's March 3, 2000 motion for reconsideration.

Stanley argued in the court of appeals that the district court had no jurisdiction over the motion for reconsideration, particularly in light of the prohibition of 28 U.S.C. § 1447(d), since that motion was filed many months after the district court had issued its August 11, 1998 Order, closed the case on its docket, and transferred the records of the case back to the state court, where for more than a year and a half the state court had been conducting proceedings. Stanley further argued that since the district court had no such jurisdiction, the court of appeals had no jurisdiction over the appeal from the district court's denial of the motion for reconsideration.[6]

But the court's discussion of whether it had appellate jurisdiction was instead written as if the appeal before it was a direct, timely appeal from the August 11, 1998 Order. Moreover, the opinion below then progressed directly to the question whether the district court had had jurisdiction on August 11, 1998, to make the judicial estoppel determination. App. 11a. Nowhere in the opinion below did the court of appeals address Stanley's arguments that, since the appeal was instead from the denial of an (untimely)

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[6] *City of Waco v. United States Fidelity & Guarantee Co.*, 293 U.S. 140 (1934), and the cases following it, some of which the court of appeals relied upon when discussing its appellate jurisdiction, were timely direct appeals from orders accompanying orders of remand. None of them addressed the jurisdictional implications of a scenario such as happened here, where no appeal from the challenged order was ever taken.

motion for reconsideration in a case that had long since been remanded to the state courts on the unreviewable basis that the federal courts lacked subject matter jurisdiction, the district court (and thereby the court of appeals) had no jurisdiction over the motion for reconsideration.

Additionally, Stanley argued in the alternative, but the court of appeals similarly did not address, that the threshold issue in the event that the district court did somehow have jurisdiction over the motion for reconsideration was necessarily whether the motion was unreasonably late, a determination that was only reviewable for abuse of discretion.[7]

The court of appeals instead dismissed the significance of the procedural posture of the case merely by conclusorily asserting that it was "plain error" to issue the underlying estoppel order. App. 11a, n.4. This comment clearly did not seriously address the jurisdictional issues that Stanley had raised.

3. On the merits, the court of appeals held that the district court, having determined that it lacked subject matter jurisdiction over the case, lacked the authority to make the estoppel determination. App.

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[7] We demonstrate in Argument II, *infra*, that it could not have been an abuse of discretion for the district court to conclude that the motion for reconsideration was not "reasonably timely," see Fed. R. Civ. P. 60(b), due to facts that the court of appeals acknowledged but gave no significance to, i.e., that 28 U.S.C. § 1446(b) prevents removal of diversity cases more than one year after the complaint is filed (in this case, June 16, 1999), and the plaintiff's motion was not made upon the basis of newly discovered evidence (indeed, in his motion for reconsideration, plaintiff asserted that he had "always contended that the value of this case was over $75,0000.00," App. 8a, 16a).

9a-11a. This conclusion required reading the district court's order in an unnatural way. Reading the order as a coherent whole, it seems clear that the judicial estoppel finding was not an afterthought, logically reached only after the court determined that it lacked subject matter jurisdiction, but instead was a logical predicate for the remand: because the plaintiff by his position was judicially estopped from recovering more than $75,000, the amount-in-controversy requirement of 28 U.S.C. § 1332 was not met, and therefore the court lacked subject matter jurisdiction and ordered the case remanded to the state court. (But we demonstrate in Argument III, *infra*, that regardless of how the August 11, 1998 Order is read, the district court clearly did have jurisdiction to enter it.)[8]

4. The court of appeals ordered the district court to vacate the judicial estoppel determination. Since 28 U.S.C. § 1447(d) prohibits the district court from reconsidering its remand order, and since 28 U.S.C. § 1446(b) now prohibits the defendant from bringing a new petition for removal even though it now will be clear that all the requirements for diversity

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[8] The court of appeals attempted to buttress its conclusion that the district court's original order overstepped its authority by repeatedly asserting, without citation of authority, that the underlying judicial estoppel determination somehow offended "basic precepts of comity." App. 13a. That perspective loses any force when it is recognized that the judicial estoppel determination was in fact the basis for the district court's decision to remand. Moreover, it is entirely routine for federal district courts to make determinations in removed cases that eventually travel back to the state court when a case is remanded. In addition, as the court of appeals itself acknowledged, the Superior Court itself heard and denied plaintiff's motion for clarification of the judicial estoppel determination. App. 8a. Finally, the court of appeals undercut this whole rationale for its result by asserting that the judicial estoppel determination might not be binding on the state court in any event. App. 13a, n.5.

jurisdiction were met, the effect of the court of appeals order will be to deprive Stanley of the federal forum that Congress intended to make available to out-of-state defendants in diversity cases. In Argument III, *infra*, Stanley will argue that the court of appeals decision unlawfully deprives the federal district courts of an important tool that they need in order to be able to carry out Congress's intentions to provide such a forum for out-of-state defendants when confronted with plaintiffs, as here, who are willing to play fast and loose with the federal courts in order to obtain a remand to a local state forum that they expect will be more favorable to them.

REASONS FOR GRANTING THE WRIT

The decision of the court of appeals presents several important issues affecting federal court removal jurisdiction. On each of these issues, the court of appeals opinion is inconsistent with fundamental precepts of federal removal jurisdiction and review embodied in statute and in the decisions of this Court and other courts of appeals.

I. The District Court Had No Jurisdiction Over A Motion For Reconsideration Filed More Than 18 Months After The District Court Had Remanded The Case To State Court For Lack Of Subject Matter Jurisdiction.

On August 11, 1998, the district court determined that the plaintiff was judicially estopped, "due to the position that he has asserted herein," from recovering more than $75,000. App. 20a. On the basis of that determination, the district court in the same order remanded the case to the state court pursuant to 28 U.S.C. § 1447(c). All parties agree that the remand order must have been based upon the

determination that the federal court lacked subject matter jurisdiction under the amount-in-controversy requirement of 28 U.S.C. § 1332. On August 13, 1998, the notice of transfer of the records back to the Essex Superior Court was filed, and, as the court below put it, "the parties found themselves back in state superior court." App. 7a. Christopher never filed any appeal from the August 11, 1998 Order.

It is well established that, once the case was remanded, the district court no longer had subject matter jurisdiction over the case.[9] Indeed, the law is clear that, once the federal court has remanded a case under 28 U.S.C. § 1447(c), it has no jurisdiction to reconsider even the most fundamental question — whether its original finding that subject matter jurisdiction was lacking was erroneous. See *Harris v. Blue Cross/Blue Shield of Alabama, Inc.*, 951 F.2d 325, 330 (11th Cir. 1992) (§ 1447(d) bars reconsideration by the district court of its own remand order); *In re Lowe*, 102 F.3d 731, 734 (4th Cir. 1996) (district court may not reconsider its decision to remand once it issues a formal order to that effect); *Federal Deposit Ins. Corp. v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979) ("The law in this circuit is clear that once a district court has decided to remand a case and has so notified the state court, the district judge is without power to take any further action . . . This language has been universally construed to prohibit even a motion for reconsideration once the state court has resumed jurisdiction."); *Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft*, 67 F.Supp.2d 1242, 1245 (D.Kan. 1999) ("[t]he broad language of Section 1447(d) clearly prohibits review of

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[9] Argument III, *infra*, addresses the reasons why the district court clearly *did* have jurisdiction to make the estoppel determination as part of the remand order.

remand orders under Section 1447(c), . . . and a motion for reconsideration is a form of review").[10]

Since, after the case has been remanded, the district court lacks jurisdiction even to reconsider its remand order — the order that effectuated its determination that it lacked subject matter jurisdiction — the court's lack of subject matter jurisdiction is established with such solidity that it would obviously be inconsistent for the court to exercise jurisdiction by reconsidering any other determination that it had made when the case was pending before remand. To do so would be inconsistent with the district court's established and unreviewable lack of subject matter jurisdiction.

The court of appeals did not address this issue (even though Stanley had raised it). Instead, the court below considered its appellate jurisdiction only by reference to a counterfactual scenario, analyzing whether the court of appeals would have had jurisdiction if the plaintiff had brought a timely appeal from the original judicial estoppel determination. App. 10a-13a.[11] That inquiry was beside the point. Even if

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[10] Indeed, appellate review of an order of remand will not lie even if the district court's decision to remand the case was erroneous. *Volvo Corp. of America v. Schwarzer*, 429 U.S. 1331, 1333 (1976) (this Court will not review such orders because any allegedly conceivable erroneous application would then be reviewable, an unacceptably "Pickwickian" result); *Gonzalez-Garcia v. Williamson Dickie Mfg. Co.*, 99 F.3d 490, 491 (1st Cir. 1996) ("[w]here the district court order of remand rests on lack of subject matter jurisdiction, that order is not reviewable by appeal *or* mandamus, *even if erroneous*.") (emphasis in original).

[11] The court of appeals concluded that 28 U.S.C. § 1447(d) did not, under *City of Waco v. United States Fidelity & Guarantee Co.*, 293 U.S. 140 (1934), preclude direct review of the estoppel order. App. 9a-10a. This Court need not reach that question; the plaintiff did not bring such an appeal.

Christopher at one time may have had a right to appeal the judicial estoppel determination in the August 11, 1998 Order, he waived any such right by failing to file a notice of appeal within thirty days as required by Rule 4 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2107.[12]

The thirty-day time limit is both mandatory and jurisdictional, and an appellate court thus has no jurisdiction to hear an appeal when notice of that appeal is not filed within the applicable time frame. *Browder v. Director, Dept. of Corrections*, 434 U.S. 257, 264-65 (1978). Christopher waived any right he might have had to appeal the remand order by failing to meet the mandatory and jurisdictional thirty-day time limit.[13]

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[12] Under Rule 4(a)(1)(4), a notice of appeal in a civil case "must be filed . . . within thirty days after the judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(A) (2000). Similarly, 28 U.S.C. § 2107 provides that "no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree." 28 U.S.C. § 2107 (2000).

[13] This case thus is not governed by *City of Waco v. United States Fidelity & Guarantee Co.*, 293 U.S. 140 (1934). In *Waco*, a timely direct appeal was taken from the district court's dismissal of the surety company; this Court held that, even though that dismissal was the basis for the resulting remand order, and even though the remand order itself was unreviewable, the court of appeals had jurisdiction to review the underlying dismissal order (which might otherwise have been unreviewable by any court). 293 U.S. at 143-44. *Waco* did not involve a situation where the City chose not to appeal the dismissal at the time, spent a year and a half litigating the case in the state courts, and then returned to the federal court seeking reconsideration of the dismissal ruling.

The court below acknowledged that the plaintiff had appealed only from the denial of a motion for reconsideration that he had filed more than 18 months after the case had been remanded to the state court for lack of federal subject matter jurisdiction. But the court of appeals, in effect, ruled that the only legal consequence of that fact was that a "plain error" standard of review would apply. App. 11a, n.4. This failure to confront the district court's lack of jurisdiction to hear the motion for reconsideration effectively conflicts with § 1447(d) itself.

Congress in enacting 28 U.S.C. § 1447(d) clearly intended that remanded cases would go back to state court with finality, not subject to simultaneous and potentially confusing and even conflicting proceedings in the state and federal courts. Congress certainly did not want the federal courts entertaining stray motions for reconsideration that could confuse and interfere with the orderly progress of state court proceedings.

Thus, even assuming that the district court lacked jurisdiction to make the judicial estoppel determination in the first place (which Stanley denies, see Argument III, *infra*), Congress did not authorize the district court to reconsider that determination pursuant to a motion brought more than a year and a half after that case has been progressing within and pursuant to the jurisdiction of the state courts. The court below made an important and unprecedented error in assuming that the district court did have jurisdiction to reopen this case long after remanding it to the state court for lack of subject matter jurisdiction.

II. The Decision Below Directly Conflicts With Decisions Of This Court Confirming That Motions Seeking To Reopen Closed Cases Must Be Made Within A "Reasonable Time" And Of Numerous Courts Of Appeals That Have Developed Standards For Determining Whether A Party Seeking To Reopen A Closed Case Meets That Requirement.

Even if the plaintiff's motion for reconsideration was somehow within the jurisdiction of the district court, the court of appeals ignored basic governing requirements that apply to any effort to reopen a civil action long after the federal court has closed the case.

Rule 60 of the Federal Rules of Civil Procedure identifies the extraordinary circumstances under which parties may seek to reopen closed cases.[14] Several of the grounds for relief specified by Rule 60 are subject to a one-year time limit. Motions based upon Rule 60(b)(4) (the judgment is void) or 60(b)(6) (any other reason justifying relief) "shall be made within a reasonable period of time." *Id.*

This Court has plainly held that the "reasonable time" requirement of Rule 60(b) must be satisfied in order for a plaintiff to be allowed to reopen a closed case. See *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988). To determine whether the "reasonable time" requirement has been met, the courts of appeals routinely require the moving party to show some good reason for the delay in seeking relief. See *PRC Harris, Inc. v. Boeing Co.*, 700 F.2d 894, 897 (2nd Cir. 1983); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 930 (5th Cir. 1976); *Cent. Operating Co. v.*

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[14] Fed. R. Civ. P. 59(e) provides for motions to alter or amend judgment, but contains a time limitation of ten days and clearly could not afford the plaintiff here any relief.

Utility Workers of America, AFL-CIO, 491 F.2d 245, 252-53 (4th Cir. 1974); *Friedman v. Wilson Freight Forwarding Co.*, 320 F.2d 244, 246 (3rd Cir. 1963); *Morse-Starrett Prods. Co. v. Steccone*, 205 F.2d 244, 249 (9th Cir. 1953). The courts of appeals also routinely consider whether the non-moving party is prejudiced by the delay. See *Sec. Mut. Cas. Co. v. Century Cas. Co.*, 621 F.2d 1062, 1067-68 (10th Cir. 1980); *Lairsey*, 542 F.2d at 930; *Jackson v. Jackson*, 276 F.2d 501, 504 (D.C. Cir. 1960).

The court of appeals in this case actually acknowledged (1) that "Christopher has offered no explanation for the delay"[15] and (2) that "by waiting more than one year from the filing of the complaint, Christopher has blocked Stanley-Bostitch from removing the case again in the event that the 'estoppel' portion of the order is vacated," citing 28 U.S.C. § 1446(b). App. 7a-8a, n.2.[16]

Even though those findings by the court of appeals conclusively demonstrate that Christopher did not file the motion for reconsideration within a "reasonable time," or at the very least demonstrate that the district court did not abuse its discretion in denying the motion for reconsideration, the court of appeals passed right over the legal significance of the

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[15] Indeed, in his motion for reconsideration, Christopher stated unequivocally that "the Plaintiff has *always* contended that the value of this case was over $75,000.00." App. 16a (emphasis added).

[16] It is patently not reasonably timely for the plaintiff to seek permission to recover more than $75,000 — which would establish that diversity jurisdiction exists — only after the one year limitation period has passed, at least, as here, where plaintiff admits that the motion is not based upon newly discovered evidence.

fact that the motion was filed unreasonably late and did not address that point at all in its decision.

The failure of the court of appeals to enforce the "reasonable time" requirement that governs motions to reopen closed cases both ignores the express language of Rule 60(b) and is in conflict with this Court's decision in *Liljeberg v. Health Servs. Acquisition Corp.*, *supra*, and numerous circuit court decisions that have established that the moving party must show some good reason for the delay in seeking relief and that the delay must not prejudice the non-moving party. The decision below effectively rejects all those cases and requirements without giving them any consideration in reaching the merits of the motion. In effect, the court of appeals decision stands for the proposition that motions to reopen closed cases do not need to be brought within a reasonable time, despite the requirements of the rule and the decisions to the contrary of this Court and of numerous courts of appeals.

III. Federal District Courts Do Not Lack The Authority To Make Judicial Estoppel Findings As Part Of A Remand Order, Binding Plaintiffs Who, Eager To Secure Their Local State Court Forum, May Be Less Than Forthright With The Federal Court As To The Amount Of Damages That They Are Claiming.

Even if it was proper for the court of appeals to have reached the merits (which it was not, for the reasons set forth in Arguments I and II, *supra*), the court of appeals erred in concluding that the district court lacked the authority to make the judicial estoppel determination. That conclusion is in conflict

with basic principles of federal removal jurisdiction and should be reviewed by this Court.

First, as noted above, the court of appeals misconstrued the district court's Order. The court of appeals apparently was mislead by the sequence in which the district court wrote out its rulings. The court of appeals concluded that the district court *first* determined that it did not have subject matter jurisdiction, and *only thereafter* determined that the plaintiff was estopped by his position on damages. But surely this is an inaccurate reading of the Order: it clearly appears from the Order itself that the judicial estoppel finding was the basis for the determination that the court lacked subject matter jurisdiction. The court thus ordered the remand, and then, in the second sentence, explained the basis for the remand in setting forth its judicial estoppel determination.

Viewed in this light, it is clear that the district court did not determine that it lacked subject matter jurisdiction before it made the judicial estoppel determination. For that reason alone, the conclusion of the court of appeals that the district court lacked the authority to make the judicial estoppel determination based upon the alleged sequence of the district court's thought process was clearly erroneous.

More fundamentally, however, even if the court of appeals were correct to rely upon the sequence of the two sentences in the actual writing of the order, it would not be correct that the district court lost subject matter jurisdiction immediately upon penning the first sentence.

The basic framework for removal jurisdiction, which supports this conclusion, may be briefly stated. Once a notice of removal is filed with the state court, a removed case is within the jurisdiction of the federal

court. 28 U.S.C. § 1446(d). After removal is perfected, the federal court "acquires full and exclusive jurisdiction over the litigation." 14C CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3738 (3d ed. 1998). "It is elementary that . . . federal jurisdiction attache[s] regardless of the actual merits of the petition for removal." *First Nat. Bank v. Johnson & Johnson*, 455 F. Supp. 361, 363 (E.D. Ark. 1978). The district court retains jurisdiction until a Notice of Remand is sent to the state court. *See Federal Deposit Ins. Corp. v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979).

On July 20, 1998, this action was removed to federal court. From that time until August 13, 1998, when the Notice of Remand was mailed to the Superior Court, the federal court had jurisdiction and power to issue all orders consistent with the administration of justice. To rule otherwise would be to deny the court's power to issue decisions in cases on its own docket.

Contrary to the decision below, penning the first sentence of the order of remand did not instantaneously deprive the district court of removal jurisdiction. For one thing, the order was not effective at the very least until it was signed by the court, and it was not signed until after the court had penned the second sentence of the order. More fundamentally, it is a well-established principle, even in the First Circuit itself, that the district court maintains jurisdiction over the case until it is actually transferred back to state court. "The law in this circuit is clear that once a district court has decided to remand a case *and has so notified the state court*, the district judge is without power to take any further action . . . This language has been universally construed to prohibit even a motion for reconsideration *once the state court has*

resumed jurisdiction." *Federal Deposit Ins. Corp. v. Santiago Plaza*, 598 F.2d at 636 (1st Cir. 1979) (emphasis added); see also *In re Lowe*, 102 F.3d 731, 734 (4th Cir. 1996) (district court may not reconsider its decision to remand once it issues a formal order to that effect).

The district court ruled that Christopher was estopped from recovering more than $75,000 because of the position that he had asserted on the issue. Once estopped, jurisdiction no longer existed and the case was properly remanded. This is precisely the type of order affirmed in *Gravitt v. Southwestern Bell Tel. Co.*, 430 U.S. 723 (1977), *reh'g denied*, 431 U.S. 975 (1977).[17]

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[17] In *Gravitt v. Southwestern Bell Tel. Co.*, 430 U.S. 723 (1997), *reh'g denied* , 430 U.S. 975 (1977), this Court held that remand orders are not reviewable under 28 U.S.C. § 1447(d) even though the remand was based on a decision by the federal judge judicially estopping a defendant from contesting jurisdiction. The defendant removed the case based on diversity grounds claiming it was domiciled in Missouri while the plaintiff was a Texas resident. Subsequently, the district court learned that the defendant had asserted it was a Texas corporation in an earlier case. The district court ruled that the defendant was judicially estopped from contesting its Texas residency by the pleading filed in the earlier case. Because the parties were no longer diverse, the court remanded the case to the state court. *Gravitt v. Southwestern Bell Tel. Co.*, 416 F.Supp. 830, 831 (W.D. Tex 1976). The United States Court of Appeals for the Fifth Circuit reversed, holding that "[j]udicial estoppel principles cannot conclusively establish jurisdictional facts." *In re Southwestern Bell Tel. Co.*, 535 F.2d 859, 861 (5th Cir. 1976). This Court reversed the court of appeals and reinstated the District Court's remand order, declaring: "The District Court's remand order was plainly within the bounds of § 1447(c) and hence was unreviewable by the Court of Appeals." *Gravitt*, 430 U.S. at 723. Christopher's appeal here is the flip side of the *Gravitt* coin. Christopher tried to manipulate facts to destroy, rather than create, federal jurisdiction. The district judge here ruled that Christopher, by his representations in court, was

It is an unfortunate fact that party plaintiffs seeking to return to their chosen, local, state court forum may upon occasion be tempted to be less than forthright with the federal district courts when out-of-state defendants have removed their case on the basis of diversity jurisdiction. When that happens, the district court should have not only the authority, but also the duty, to protect the defendant's statutory rights to a federal court forum under 28 U.S.C. §§ 1441 and 1332.

The district court's August 11, 1998 Order allowed the plaintiff's motion and remanded the case to the plaintiff's chosen, local state court forum. In so ruling, however, the district court was careful to prevent the plaintiff from taking unfair advantage of this decision that effectively deprived Stanley of its statutory right to a federal court trial. The court of appeals decision, however, if not reversed, will not only permit the plaintiff to enjoy the benefits of his local forum; it will relieve him of the limitation on his damages that was the very basis for the district court's remand order, even though, as the court of appeals found, the plaintiff misled the district court as to the amount in controversy and the true facts show that there always was federal subject matter jurisdiction.

This result should be intolerable, and it clearly is contrary to the intent of Congress in enacting 28 U.S.C. §§ 1332 and 1441. Moreover, the decision below, if it is allowed to stand, threatens to prevent district courts from taking appropriate similar action in future cases to protect the rights of citizens who have properly invoked the protection of a federal judicial forum in accordance with Congressional

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estopped from recovering over $75,000. In turn, this ruling destroyed jurisdiction and required remand.

intent. This Court should grant certiorari and prevent that result.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: May 29, 2001

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APPENDIX A

United States Court of Appeals
For the First Circuit

No. 00-1387

BENJAMIN CHRISTOPHER,
Plaintiff, Appellant,

v.

STANLEY-BOSTITCH, INC.,
Defendant, Appellee.

JUDGMENT

Entered: February 27, 2001

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court as it pertains to the second sentence of the August 11, 1998 order of remand to the state court is vacated and re-

manded to the district court in accordance with the opinion issued this day.

By The Court

PHOEBE MORSE, CLERK

BY: JANICE M. O'NEIL
Chief Deputy Clerk

[cc: Messrs. Broadhurst & Duggan]

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 00-1387

BENJAMIN CHRISTOPHER,

Plaintiff, Appellant,

v.

STANLEY-BOSTITCH, INC.,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, Chief U.S. District Judge]

Before

Torruella, Chief Judge,

Lynch and Lipez, Circuit Judges.

Arthur J. Broadhurst, with whom John F. Lakin and Broadhurst, Lakin & Lakin, were on brief, for appellant.

Christopher A. Duggan, with whom Kristen M. DeAngelo and Smith & Duggan, LLP, were on brief, for appellee.

February 27, 2001

Per Curiam. Plaintiff appeals from the denial of his motion to reconsider an order issued on August 11, 1998, by the federal district court, remanding the case to the state court. Plaintiff's real argument on appeal is with that portion of the order which purported to hold that the plaintiff was "judicially stopped," when the case was on remand to the state trial court, from recovering more than $75,000 in damages. We conclude we have jurisdiction to review that portion of the order and hold that once the district court concluded it lacked subject matter jurisdiction over the case, it did not retain jurisdiction to make such an estoppel determination. We order the estoppel language only stricken from the August 11, 1998, remand order.

I.

This is a case that was originally filed in Massachusetts state court, Essex County, on June 15, 1998. Plaintiff Benjamin Christopher alleged that injuries suffered to his ankle as a result of an accident with a nail gun were attributable to Stanley-Bostitch, Inc., the manufacturer of the gun. Specifically, Christopher charged Stanley-Bostitch with failing to exercise reasonable care in the design of the nail gun, in breach of implied and/or express warranties of fitness and merchantability. While claiming "severe and permanent damages" in the complaint, Christopher did not quantify his damages with a dollar amount.[1]

[1] Christopher did not allege specific monetary damages in accordance with Mass. Gen. Laws Ann. ch. 231, § 13B (West 2000): "No complaint in any civil action shall contain an ad

On June 23, 1998, the Essex County Superior Court remanded the action to the district court of Lawrence, Massachusetts, because Christopher had failed to allege special damages in excess of $25,000. Christopher promptly moved to re-transfer the case to superior court, a motion that was again denied for failure to allege special damages. Christopher filed a motion for reconsideration of the denial of the motion to re-transfer, this time attaching a photograph and x-ray of the injured ankle and a report from a treating physician. The report stated that permanent damage had been done to the ankle which caused chronic pain and rendered Christopher permanently disabled from the type of work that he had performed prior to his injury. On July 23, 1998, the court granted the motion for reconsideration, and the case was transferred back to superior court.

While these events unfolded in the state courts, on July 20, 1998, Stanley-Bostitch filed a notice of removal to federal court pursuant to 28 U.S.C. § 1441(a). Stanley-Bostitch claimed federal jurisdiction under diversity of citizenship, 28 U.S.C. § 1332, alleging that Christopher was a citizen of Massachusetts and that Stanley-Bostitch was a citizen of Delaware (incorporation) and Rhode Island (principal place of business). As evidence that the amount in controversy exceeded $75,000, Stanley-Bostitch offered that Christopher had received workers' compensation benefits in excess of $85,000 for his ankle injury.

In response to Stanley-Bostitch's removal action, Christopher filed an "opposition to defendant's request for removal" (effectively a motion to remand,

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damnum or monetary amount claimed against any defendant, unless such ad damnum or monetary amount claimed indicates damages which are liquidated or ascertainable by calculation . . . ."

28 U.S.C. § 1447(c)). Christopher's motion claimed that Stanley-Bostitch had not met its burden of proof that the amount in controversy exceeded $75,000. Christopher made several assertions designed to imply that the value of the case did not exceed $75,000. First, he attached the superior court notice remanding the case to Lawrence District Court, characterizing that action as based on a "factual determination [by the superior court judge] that the plaintiff's damages could not exceed $25,000." Christopher also pointed out that the information regarding the workers' compensation settlement that had been cited by Stanley-Bostitch was not attributed to any source, reliable or otherwise. Finally, Christopher made the legal assertion that recovery of any lost wages that may have been part of the workers' compensation claim was barred by Mass. Gen. Laws Ann. ch. 152, § 15 (West 2000).

Stanley-Bostitch opposed Christopher's motion to remand. First, Stanley-Bostitch revealed the omissions and misstatements made by Christopher regarding the superior court's remand of the case to Lawrence District Court. For example, despite Christopher's citation to the superior court's "factual determination," the only factor motivating the court's remand was Christopher's failure to provide a statement regarding special damages. Christopher neglected to mention that, following remand, Christopher had twice petitioned the superior court to re-transfer the case to superior court on the grounds that "damages have greatly exceeded $25,000.00." Most importantly, Christopher did not reveal to the federal district court that the case had been re-transferred to the superior court from the state district court five days before Christopher filed his motion to remand. Put in this context, Christopher's statement that the superior court had made a "factual determination" that the case was not worth more than

$25,000 was, at best, misleading and demonstrated a questionable lack of forthrightness to the federal court.

Stanley-Bostitch also provided an affidavit and a letter from CIGNA Property & Casualty attesting to the $85,000 in workers' compensation that was paid out for Christopher's injury. Stanley-Bostitch argued that, despite Christopher's assertion to the contrary, Mass. Gen. Laws Ann. ch. 152, § 15 (West 2000), does not prevent recovery of Christopher's lost wages. If Christopher recovered lost wages from Stanley-Bostitch, CIGNA, the insurer, would be entitled to reimbursement under § 15. Reimbursement, Stanley-Bostitch asserted, would not affect the calculation of the amount in controversy for purposes of determining diversity jurisdiction.

The day after Stanley-Bostitch filed its opposition, August 11, 1998, the district court issued the following order:

> This case is ordered remanded to the Massachusetts Superior Court sitting in and for the County of Essex. The plaintiff due to the position he has asserted herein, is judicially stopped from recovering more than $75,000 in this action.

On August 13, 1998, the notice of transfer of the records to Essex Superior Courthouse was filed, and the parties found themselves back in state superior court.

On November 23, 1999, more than one year after remand to state court,[2] Christopher filed a

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[2] Christopher has offered no explanation for the delay in requesting review of the district court's remand order. Stanley-

"Motion for Clarification" with the superior court. The motion requested that the superior court disregard the portion of the district court's remand order that stopped Christopher from seeking more than $75,000 in recovery. As grounds for this request, Christopher asserted that once the district court determined that it lacked subject matter jurisdiction over the case, it lacked the authority to prevent Christopher from seeking more than $75,000. Stanley-Bostitch opposed the motion for clarification, characterizing the district court's action as an estoppel order, and arguing that the elements for judicial estoppel were present. After a hearing, the superior court denied Christopher's motion for clarification on February 29, 2000.

It was at this point, March 8, 2000, more than a year and a half after the federal district court remanded the case to superior court, that Christopher filed a motion for reconsideration of the remand order with the federal district court. Christopher asked the district court either to vacate the portion of the order limiting damages or, in the alternative, to revoke the remand and allow the case to proceed in federal court. In support of this motion, Christopher stated that he had never argued that the case was worth less than $75,000, but only that Stanley-Bostitch had failed to meet its burden regarding the amount in controversy. In fact, according to Christopher, "the Plaintiff has always contended that the value of this case was over $75,000.00." As proof of this, Christopher attached his motion filed in the superior court to re-transfer the case from the Lawrence District Court, the very motion that Christopher had declined to reveal to the

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Bostitch has pointed out that by waiting more than one year from the filing of the complaint, Christopher has blocked Stanley-Bostitch from removing the case again in the event that the "estoppel" portion of the order is vacated. 28 U.S.C. § 1446(b) ("[A] case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.").

federal court in his original motion to remand. The next day, the district court denied Christopher's motion for reconsideration without elaboration. Christopher appeals the denial of reconsideration to this Court.

II.

A. Appellate Jurisdiction

We start with the question about this court's jurisdiction over such an appeal. The district court remanded the case to state court. At the time that the court issued its order remanding the case, the only ground pending for such a remand was lack of subject matter jurisdiction, either because the amount in controversy was not met, or because there was not a sufficient showing that it was met.[3]

Congress has expressly limited the jurisdiction of the courts of appeal over remand orders, providing that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise [excepting certain civil rights cases]." 28 U.S.C. § 1447(d). This limitation is intended to prevent prolonged litigation of the remand issue, see United States v. Rice, 327 U.S. 742, 751 (1946), and to minimize interference in state court proceedings by the federal courts, for reasons of comity, see In re La Providencia Dev. Corp., 406 F.2d 251, 252 (1st Cir. 1969). This limitation on review encompasses remands under § 1447(c) for lack of federal subject matter jurisdiction, though appellate review may be available where the district court remands on certain other grounds. See Thermtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336, 343-46 (1976). Because

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[3] Appellate review has been hampered by the lack of any explanation of the district court's original remand order or of the denial of the motion for reconsideration.

the remand order in this case is based on a lack of subject matter jurisdiction, under § 1447(d) there is no appellate jurisdiction to review the remand determination.

However, that leaves the interpretation of the second sentence of the order, in which the court stated that the plaintiff was "judicially stopped" from seeking more than $75,000 in damages. We understand this sentence to purport to determine the estoppel question in the state court proceeding. Section 1447(d) does not allow district courts to insulate separate and severable concurrent orders from review merely by attaching those orders to a remand order. Where the concurrent order of the court is severable from the remand order "in logic and in fact," that order may be reviewable. See City of Waco v. United States Fidelity & Guarantee Co., 293 U.S. 140 (1934); Carr v. American Red Cross, 17 F.3d 671, 674-75 (3d Cir. 1994) ("[W]e have embraced the principle that a district court cannot prevent appellate review of a final collateral order by contemporaneously remanding a case to state court.").

Since the order issued by the district court not only remanded the case to state court but also purported to preclude the plaintiff from seeking damages in excess of $75,000, that latter portion of the order seeks to conclusively resolve estoppel issues independent from (and unnecessary to) the remand determination. Unlike dismissal on preemption grounds, where the preemption determination is inextricably intertwined with the remand decision, here the determination that the plaintiff should be estopped is not essential to the decision to remand. Cf. Nutter v. Monongahela Power Co., 4 F.3d 319 (1993) (no review of district court's decision to remand on grounds that plaintiff's state law claim was not preempted by federal law). As such, the estoppel

portion of the district court's order is subject to appellate review under the logic of City of Waco.

Alternatively, this court has previously treated attempted appeals from (possibly) unappealable orders as a petition for a writ of mandamus. See United States v. Horn, 29 F.3d 754, 769 (1st Cir. 1994); see also Phinney v. Wentworth Douglas Hosp., 199 F.3d 1, 3 (1st Cir. 1999); United States v. Collamore, 868 F.2d 24, 26-27 (1st Cir. 1989). Mandamus can be appropriate in those rare cases in which the issuance of an order presents a question about the limits of judicial power, poses a risk of irreparable harm to the appellant, and is plainly erroneous, and the case for mandamus is particularly compelling where the order poses an elemental question of judicial authority. See Horn, 29 F.3d at 769-70. Were this court lacking appellate jurisdiction over the estoppel portion of the order on direct appeal, we would find this an appropriate instance for such mandamus jurisdiction and relief because the order, as discussed below, did two impermissible things: it was entered when there was no federal jurisdiction and it purported to tell the state courts what to do.

B. District Court Jurisdiction

We conclude that, having determined that it lacked subject matter jurisdiction over the case, the court lacked authority to make the estoppel determination. Indeed, it impermissibly intruded into a matter properly left to the state courts.[4]

The decision to remand the case to state court reflected the district court's conclusion that it lacked subject matter jurisdiction over the case. When a

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[4] While the scope of review of denials of motions for reconsideration is narrow, we consider the estoppel order to be plain error.

federal court concludes that it lacks subject matter jurisdiction over a case, it is precluded from rendering any judgments on the merits of the case. See Willy v. Coastal Corp., 503 U.S. 131, 137 (1992) ("A final determination of lack of subject-matter jurisdiction of a case in a federal court, of course, precludes further adjudication of it."); In re Orthopedic "Bone Screw" Prods. Liab. Litig., 132 F.3d 152, 155 (3d Cir. 1997) ("If a court [ ] determines that it lacks subject matter jurisdiction, it cannot decide the case on the merits."); Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990) ("[W]e have held that a judge ordering a dismissal based upon lack of subject matter jurisdiction retains no power to make judgments relating to the merits of the case.") (internal quotation marks omitted).

A court without subject matter jurisdiction may retain some limited authority to protect its own independent interests in its procedures. Compare Willy, 503 U.S. at 137-39 (allowing imposition of Rule 11 sanctions for discovery violations to stand where court lacked subject matter jurisdiction over underlying matter), with United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72, 76-80 (1988) (refusing to enforce civil contempt order against nonparty for violating discovery order where subject matter jurisdiction over the underlying matter was found lacking on appeal). However, whatever incidental power the court retains cannot go to the merits of the underlying action. Rather, orders relating to the merits of the underlying action are void if issued without subject matter jurisdiction. See, e.g., Shirley v. Maxicare Texas, Inc., 921 F.2d 565 (5th Cir. 1991) ("Unless a federal court possesses subject matter jurisdiction over a dispute, [ ] any order it makes (other than an order of dismissal or remand) is void."); see also Hernandez v. Conriv Realty Assoc., 182 F.3d 121, 123 (2d Cir. 1999) (district court lacking subject matter jurisdiction

cannot, as sanction, dismiss case with prejudice); In re Orthopedic "Bone Screw", 132 F.3d at 155-56 (same).

Having determined that the portion of the order requiring that the plaintiff be "judicially stopped" from recovering more than $75,000 is not inextricably intertwined with the remand determination, we find that the district court was without authority to issue the judicial estoppel order.[5] We also note that the order violated basic precepts of comity. Therefore, we vacate that portion of the order.

Subject matter jurisdiction is not a "nicety of legal metaphysics" but rests instead on "the central principle of a free society that courts have finite bounds of authority." See United States Catholic Conference, 487 U.S. at 77. Courts must be careful to respect these limits on their authority.

III.

For these reasons, we remand with instructions to the district court to vacate the second sentence of the August 11, 1998 order of remand to the state court. Otherwise, the remand order remains intact.

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[5] Apart from its jurisdictional infirmities and its infringement of comity concerns, it is not clear that the estoppel order would have been appropriate for other reasons. As a matter of federal law, unappealable decisions generally do not have preclusive weight. See González-García v. Williamson Dickie Mfg. Co., 99 F.3d 490, 492 (1st Cir. 1996) ("Because the district court's preemption finding is unreviewable, principles of collateral estoppel would not apply to preclude relitigation of the issue in state court."); Nutter, 4 F.3d at 322 ("[W]e do not believe the district court's jurisdictional findings incident to remand should preclude relitigation of the same issues in state court."); see also Restatement (Second) of Judgments § 28(1) (stating that there is an exception to preclusion generally when "[t]he party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action").

Given concerns of comity, nothing in this opinion ought to be construed to preclude the normal application of equitable principles or collateral estoppel rules by the state court. While the state court may (or may not) decide that estoppel principles apply, it was not the province of the federal district court to dictate that result to the state court. **So ordered.**

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BENJAMIN CHRISTOPHER, Plaintiff,	) CIVIL ACTION NO.*) 98-CV-11432-WGY
v.	)
STANLEY-BOSTITCH, INC., Defendant.	)

PLAINTIFF'S MOTION FOR RECONSIDERATION

NOW COMES the Plaintiff, Benjamin Christopher, through his counsel, John F. Lakin, Esquire, and hereby requests this Honorable Court to allow the Plaintiff to proceed with his civil case in the United States District Court or, in the alternative, vacate the Court's order of August 11, 1998. The Plaintiff contends that the Honorable William G. Young's Order of August 11, 1998 holding,

> "This case is ordered remanded to the Massachusetts Superior Court sitting an for the County of Essex. The Plaintiff due to the position he has asserted herein, is judicially estopped from recovering more than $75,000.00 in this action."

is based on the assumption that the Plaintiff in fact asserted a position on the value of the case as $75,000.00 or less. The Plaintiff never made or inferred any such representation in his Motion in Opposition to the Defendant's Motion of Removal to Federal Court.

The Plaintiffs clearly indicated in the opposition motion that the Defendant did not meet his burden for the removal under federal law. As no point in the Plaintiff's opposition brief did the Plaintiff specifically assert a position on value. In fact, the Plaintiff has always contended that the value of this case was over $75,000.00. (See enclosed Motion to Re-Transfer to Superior Court, allowed by the Honorable Howard Whitehead . . .

BROADHURST,
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ONE ELM SQUARE
ANDOVER, MA
01810
(978) 470-3545

*The following ruling was made:

"YOUNG D.J.
MOTION DENIED

/s/ William G. Young
U.S. District Judge
March 9, 2000"

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO: 98-1125

BENJAMIN CHRISTOPHER,)*
Plaintiff,)
)
v.)
)
STANLEY-BOSTITCH, INC.,)
Defendant.)

PLAINTIFF'S MOTION FOR CLARIFICATION

NOW COMES the Plaintiff, Benjamin Christopher, and respectfully requests this Honorable Court to preclude the order of the federal district court (Young, J.) dated August 1, 1998 (See, Exhibit "A" attached hereto) such that plaintiff may recover damages as a jury sees fit. As grounds for this motion, the Plaintiff states that the federal district court determined it lacked jurisdiction and therefore was without the statutory power to issue a

substantive order limiting damages in a state court trial.

Respectfully submitted,
The Plaintiff,
By his attorney,

/s/ John F. Lakin
BBO #556723
Christian Colwell
BBO #563824
Broadhurst, Lakin & Lakin
One Elm Square
Andover, MA 01810
(978) 470-3545

CERTIFICATE OF SERVICE
I hereby certify that I have this day served a copy of the within by fax-express mail on all interested parties.

11/23/99 /s/ John F. Lakin

*NOTICE OF HEARING

Superior Court Rule 9As.(b)(1). The Court will hear arguments on the within motion at the Essex Superior Court, 34 Federal St., Salem, MA on Feb. 28 at 2 ~~A.M.~~/P.M. Brady, J. presiding, ALTERNATIVE DATE WILL NOT BE GRANTED.

The following ruling was made:

"Brady, J., 2/28/00
Denied after hearing
Attest: J. Brennan
Asst. Clerk"

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 98CV11432WGY

BENJAMIN CHRISTOPHER, *

Plaintiff,

v.

STANLEY-BOSTITCH, INC.,

Defendant.

DEFENDANT STANLEY BOSTITCH, INC'S OPPOSITION TO "PLAINTIFFS' OPPOSITION TO DEFENDANT'S REQUEST FOR REMOVAL" AND REQUEST FOR ORAL ARGUMENT

Defendant Stanley-Bostitch, Inc. ("Stanley") opposes the motion filed by plaintiff, Benjamin Christopher ("Christopher") on July 27, 1998 entitled: "Plaintiffs' Opposition to Defendant's Request for Removal." As a preliminary matter, Stanley assumes that this motion was intended to have the effect of a motion to remand the case to state court, filed pursuant to 28 U.S.C. § 1447(c) and Stanley will respond accordingly.

As grounds, Stanley states that the amount in controversy clearly exceeds the jurisdictional limits even though plaintiff may not have a liability case against Stanley. Plaintiff's workers' compensation lien

exceeds $80,000.00 to date. Specifically, Stanley states:

1. On June 16, 1998 plaintiff filed a complaint in Essex Superior Court. (Exhibit 1). On June 23, 1998, the Essex Superior Court remanded this case to Lawrence District Court. (Exhibit 2) The plaintiff filed a Motion to Re-Transfer the case the Superior Court on July 1, 1998 which was denied on July 8, 1998 because the plaintiff failed to include a statement of special damages.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BY: /s/_____

DOCKETED

*The following ruling was made:

"August 11, 1998,
This case is ordered remanded
to the Massachusetts Superior Court
sitting in and for the County
of Essex. The plaintiff due
to the position he has asserted
herein, is judicially stopped
from recovering more than
$75,000.00 in this action."

/s/ William G. Young, District Judge

(2)

No. 00-1806

Supreme Court, U.S.
FILED
SEP 17 2001
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

THE STANLEY WORKS,

Petitioner,

v.

BENJAMIN CHRISTOPHER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

SUPPLEMENTAL BRIEF

CHRISTOPHER A. DUGGAN
H. REED WITHERBY
Counsel of Record
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(617) 248-1900

Counsel for Petitioner

Date: September 15, 2001

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

5PP

SUPPLEMENTAL BRIEF

The Stanley Works respectfully submits this supplemental brief in further support of granting certiorari on the third of the three questions presented in its petition for a writ of certiorari, concerning whether the federal district courts have the authority, in cases removed from state court based upon diversity of citizenship, to protect an out-of-state defendant's statutory right to a federal court forum.

The problem presented is that a plaintiff can manipulate the rules governing removal jurisdiction, by first persuading the district court to remand a case to state court on the basis that the required jurisdictional amount is not met and then seeking more than that amount back in state court. In this case, the First Circuit held, essentially, that the district courts lack the authority to prevent such manipulation.[1]

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[1] The plaintiff in this case (Christopher) took the position in the district court that the amount in controversy was less than $75,000, and the district court accordingly remanded the case to state court but limited plaintiff's recovery to less than $75,000 "due to the position he has asserted." Pet. 7a. More than a year later, Christopher moved to reconsider the limitation. The First Circuit expressly found that the Christopher's earlier assertions to the district court as to the amount in controversy had been "at best, misleading" and "demonstrated a questionable lack of forthrightness to the federal court." *Id.* Nevertheless, the First Circuit held that the district court had no authority to impose the limitation. The court of appeals therefore ordered the district court to vacate the limitation — but not the remand. Under the time constraints of 28 U.S.C. § 1446(b), Stanley now is effectively blocked from removing the case again, even though it is now clear that the substantive statutory requirements for removal have always been present.

On August 8, 2001, by contrast, a district court in the Eleventh Circuit exercised just such authority by issuing a remand order that limited the plaintiff to damages below the federal jurisdictional minimum: "The court emphasizes that should Plaintiffs . . . pursue or accept damages in excess of $75,000, then upon motion by opposing counsel, sanctions will be swift in coming and painful upon arrival." *Brooks* v. *Pre-Paid Legal Servs*, 2001 U.S. Dist. LEXIS 11994, *7 (M.D. Ala. 2001).[2]

Courts in other circuits, also inconsistently with the decision below, have exercised the authority to protect the statutory rights of defendants to a federal forum against such manipulation.

The Fifth Circuit has stated that plaintiffs must "show their commitment to recovery below the federal threshold." *De Aguilar* v. *Boeing Co.*, 47 F.3d 1404, 1412 n.10 (5th Cir. 1995). A district court in

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[2] The problem of determining federal jurisdiction in diversity cases removed from state court when the amount in controversy is unclear from the face of the plaintiff's complaint is one that arises with considerable frequency within the district courts. Alice M. Noble-Allgire, *Removal of Diversity Actions When the Amount in Controversy Cannot be Determined from the Face of Plaintiff's Complaint: The Need for Judicial and Statutory Reform to Preserve Defendant's Equal Access to Federal Courts*, 62 Mo. L. Rev. 681, 683-85 (1997). Because some States including Massachusetts do not require, or forbid, *ad damnum* clauses, the district courts are left with the problem of trying to determine whether jurisdiction exists; the courts have not applied a consistent standard in reaching that determination. *Id.* at 692.

the Fifth Circuit required just such a showing of commitment by conditioning remand upon the plaintiffs' filing an affidavit "swearing that they will never request nor collect more than $74,999.99 from the Defendant . . .." *Matney* v. *Wenger*, 957 F. Supp. 942, 944 (S.D. Tex. 1997).[3]

A district court in the Eighth Circuit effectively exercised similar authority by accepting a plaintiff's stipulation that he would seek less than the jurisdictional minimum. *Halsne v. Liberty Mut. Group*, 40 F. Supp. 2d 1087, 1092 (N.D. Iowa 1999).

The First Circuit held below, by contrast, that "it was not the province of the federal district court to dictate that result [a limit upon recoverable damages] to the state court." Pet. 14a. By requiring plaintiffs to sign affidavits or to stipulate to an amount of recovery less than the jurisdictional amount, however, that is exactly what the district courts in the Fifth, Eighth and Eleventh Circuits effectively have done.[4]

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[3] Aware of the potential for "manipulation by the plaintiff who prays for damages below the jurisdictional amount even though he knows that his claim is actually worth more," the Fifth Circuit requires a state court plaintiff seeking to prevent removal to show with certainty that he will not be able to recover more than the damages sought in his state court complaint, when that complaint contains an *ad damnum* that is below the jurisdictional minimum. *St. Paul Reins. Co. Ltd.* v. *Greenberg*, 134 F.3d 1250, 1254 n.18 (5th Cir. 1998).

[4] On the use of affidavits and stipulations in such circumstances, see Noble-Allgire, *supra*, 62 Mo. L. Rev. at 738-39.

The First Circuit's opinion effectively rewards Christopher for his "misleading" statements and "questionable lack of forthrightness to the federal court." Pet. 7a. This Court should grant certiorari to address and confirm the authority of the district courts to prevent such manipulation by plaintiffs that unjustly deprives out-of-state defendants in diversity removal cases of the federal forum that Congress intended to make available to them.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

CHRISTOPHER A. DUGGAN
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(617) 248-1900

Counsel for Petitioner

Date: September 15, 2001